



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-471-807

Certain Uncoated Paper from Portugal: Preliminary Affirmative  
Determination of Critical Circumstances in the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of  
Commerce

DATES: Effective date: (Insert date of publication in the Federal Register.)

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Background

On August 26, 2015, the Department of Commerce (“the Department”) published its preliminary determination in the antidumping duty investigation of certain uncoated paper from Portugal.<sup>1</sup> On September 28, 2015, Petitioners<sup>2</sup> filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206, alleging that critical circumstances exist with respect to imports of the merchandise under consideration.<sup>3</sup> On September 29, 2015, the Department issued a letter to Portucel S.A. (“Portucel”), the sole respondent in this investigation, requesting monthly

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<sup>1</sup> See Certain Uncoated Paper From Portugal: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 51777 (August 26, 2015) (“Preliminary Determination”).

<sup>2</sup> Petitioners are United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Domtar Corporation; Finch Paper LLC; P.H. Glatfelter Company; and Packaging Corporation of America (collectively “Petitioners”).

<sup>3</sup> See Letter to the Secretary of Commerce from Petitioners “Petitioners’ Critical Circumstances Allegation” (September 28, 2015) (“Petitioners’ Critical Circumstances Allegation”).

shipment data from July 2014 through August 2015.<sup>4</sup> On October 6, 2015, Portucel filed its response to the Department's request for monthly shipment data.<sup>5</sup>

In accordance with 19 CFR 351.206(c)(1), when a critical circumstances allegation is filed 30 days or more before the scheduled date of the final determination, the Department will issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist. Because the critical circumstances allegation in this case was submitted after the preliminary determination was published, the Department must issue its preliminary findings of critical circumstances no later than 30 days after the allegation was filed.<sup>6</sup>

### Legal Framework

Section 733(e)(1) of the Tariff Act of 1930, as amended ("the Act"), provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "in general,

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<sup>4</sup> See Letter to Portucel from Catherine Bertrand, Program Manager, Office V "Request for Monthly Quantity and Value Shipment Data" (September 29, 2015).

<sup>5</sup> See Letter to Catherine Bertrand, Program Manager, Office V, from Portucel "Portucel's Monthly Quantity and Value Shipment Data" (October 6, 2015).

<sup>6</sup> See 19 CFR 351.206(c)(2)(ii).

unless the imports during the ‘relatively short period’ . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time.

#### Critical Circumstances Allegation

In their allegation, Petitioners contend that, based on the dumping margins assigned by the Department in the Preliminary Determination, importers knew or should have known that the merchandise under consideration was being sold at less than fair value (“LTFV”).<sup>7</sup> Petitioners also contend that, based on the preliminary determination of injury by the U.S. International Trade Commission (“ITC”), there is a reasonable basis to impute importers’ knowledge that material injury is likely by reason of such imports.<sup>8</sup> Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), Petitioners submitted import statistics for the HTS numbers included in the scope for the period between August 2014 and July 2015 as evidence of massive imports of uncoated paper from Portugal during a relatively short period.<sup>9</sup>

#### Analysis

The Department’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to the Department, such as: (1) the evidence presented in Petitioners’ critical circumstances allegation; (2) import

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<sup>7</sup> See Petitioners’ Critical Circumstances Allegation, dated September 28, 2015, at 2-4.

<sup>8</sup> Id.

<sup>9</sup> Id. at 4-6, Exhibit 1.

statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.<sup>10</sup> As further provided below, in determining whether the above statutory criteria have been satisfied in this case, we have examined: (1) the evidence presented in Petitioners' September 28, 2015, allegation; (2) information obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

*Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise*

In determining whether a history of dumping and material injury exists, the Department generally has considered current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country.<sup>11</sup> In this case, the current investigation of the subject merchandise marks the first instance that the Department has examined whether the goods are dumped into the United States. As a result, the Department previously has not imposed an antidumping duty order on the subject merchandise. Moreover, the Department is not aware of any antidumping duty order on subject merchandise from Portugal in another country. Therefore, the Department finds no history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act.

*Section 733(e)(1)(A)(ii): The importer knew or should have known that exporter was selling at less than fair value and that there was likely to be material injury*

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, the Department must rely on the facts before it at the time the determination is made.

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<sup>10</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, 73 FR 31970, 31972-73 (June 5, 2008) ("Carbon Steel Pipe"); Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China, 74 FR 2049, 2052-53 (January 14, 2009) ("SDGE").

<sup>11</sup> See Carbon Steel Pipe, 73 FR at 31972-73; see also SDGE, 74 FR 2052-53.

The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC's preliminary injury determination.

The Department normally considers margins of 25 percent or more for export price ("EP") sales and 15 percent or more for constructed export price ("CEP") sales sufficient to impute importer knowledge of sales at LTFV.<sup>12</sup> Portucel had only CEP sales and the Department preliminarily determined a margin of 29.53 percent for Portucel, which was also assigned as the "all others" rate.<sup>13</sup> Therefore, because the preliminary margins are greater than 15 percent for all producers and exporters, we preliminarily find, with respect to all producers and exporters, that there is a reasonable basis to believe or suspect that importers knew, or should have known, that exporters were selling the merchandise under consideration at LTFV.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC.<sup>14</sup> If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.<sup>15</sup> Here, the ITC found that "there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Australia, Brazil, China, Indonesia,

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<sup>12</sup> See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005).

<sup>13</sup> See Preliminary Determination, 80 FR at 51778.

<sup>14</sup> See, e.g., Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation, 75 FR 24572, 24573 (May 5, 2010) ("Salt Critical Circumstances Prelim").

<sup>15</sup> See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005).

and Portugal of certain uncoated paper, provided for in subheadings 4802.56 and 4802.57 of the Harmonized Tariff Schedule of the United States. . . .”<sup>16</sup>

*Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period*

Pursuant to 19 CFR 351.206(h)(2), the Department will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. The Department normally considers a “relatively short period” as the period beginning on the date the proceeding begins and ending at least three months later.<sup>17</sup> For this reason, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the “base period”) to a comparable period of at least three months following the filing of the petition (i.e., the “comparison period”).<sup>18</sup>

In their September 28, 2015 allegation, Petitioners included U.S. import data collected from the ITC’s Dataweb.<sup>19</sup> Specifically, Petitioners provided data for a six-month base period (August 2014 through January 2015) and a six-month comparison period (February 2015 through July 2015), the most recent data available at the time of filing, in showing whether imports were massive.<sup>20</sup> In response to a request by the Department, on October 6, 2015, Portucel submitted monthly shipment data for merchandise shipped from Portucel to the United States for a seven-month base period (July 2014 through January 2015) and a seven-month comparison period (February 2015 through August 2015).<sup>21</sup> The quantity of Portucel’s shipments of uncoated paper

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<sup>16</sup> See Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal, Investigation Nos. 701–TA–528–529 and 731–TA–1264–1268 (Preliminary), 80 FR 13890 (March 17, 2015).

<sup>17</sup> See 19 CFR 351.206(i).

<sup>18</sup> See Salt Critical Circumstances Prelim, 75 FR at 24574.

<sup>19</sup> See Petitioners’ Critical Circumstances Allegation at 4-5, Exhibit 1.

<sup>20</sup> Id. 5, Exhibit 1. At the time of filing, import data was available only through July 2015.

<sup>21</sup> See Portucel’s Monthly Quantity and Value Shipment Data, filed on October 6, 2015.

increased in the comparison period by 18.6 percent over the base period.<sup>22</sup> Our practice with respect to companies subject to the “all others” rate is to base our critical circumstances analysis on the experience of the investigated companies.<sup>23</sup>

#### Preliminary Affirmative Determination of Critical Circumstances

Record evidence indicates that importers of uncoated paper knew, or should have known, that exporters were selling the merchandise at LTFV, and that there was likely to be material injury by reason of such sales. In addition, we have found that Portucel had massive imports during a relatively short period. Therefore, in accordance with section 733(e)(1) of the Act, we preliminarily find that there is reason to believe or suspect that critical circumstances exist for imports of the merchandise under consideration from Portucel and companies subject to the all others rate.<sup>24</sup>

#### Suspension Of Liquidation

In accordance with section 733(e)(2)(A) of the Act, we are directing the U.S. Customs and Border Protection to suspend liquidation of any unliquidated entries of the merchandise under consideration from Portugal entered, or withdrawn from warehouse for consumption, on or after May 27, 2015, which is 90 days prior to the date of publication of the Preliminary Determination in the Federal Register.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative critical circumstances determination.

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<sup>22</sup> See Memorandum to the File from Ryan Mullen, International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V “Antidumping Duty Investigation of Certain Uncoated Paper from Portugal: Import Statistics for Critical Circumstances Analysis” at Exhibit 1.

<sup>23</sup> See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrate from the Federal Republic of Germany, 73 FR 21909, 21912 (April 23, 2008), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrate from the Federal Republic of Germany, 73 FR 38986, 38987 (July 8, 2008), and accompany Issues and Decision Memorandum at Comment 2.

<sup>24</sup> See section 733(f) of the Act; 19 CFR 351.206(c)(2)(ii).

This determination is published pursuant to sections 733(f) and 777(i) of the Act and 19 CFR 351.206(c)(2)(ii).

Dated: October 28, 2015.

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

[FR Doc. 2015-28112 Filed: 11/3/2015 8:45 am; Publication Date: 11/4/2015]